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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/746,880	12/22/2000	David John Tyrrell	16,496	9383

23556 7590 09/25/2002

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EXAMINER

WEBB, JAMISUE A

ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 09/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/746,880	Applicant(s) TYRRELL ET AL.
	Examiner	Art Unit
	Jamisue A. Webb	3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 15 July 2002.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-56 is/are pending in the application.

4a) Of the above claim(s) 6,7,16-19,30,31,36-39,42,44 and 48 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-5,8-15,20-29,32-35,41,43,45-47 and 49-56 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9, 10, 14. 6)  Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-5, 8-15, 20-29, 32-35, 40, 41, 43, 45-47 and 49-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krzysik et al. (6,149,934) in view of Beerse et al. (6,294,186).

4. With respect to Claim 1, 5, 8, 10, 11, 14, 15, 20, 25, 26, 29, 34, 35, 40, 47, 49, 50, 52 and 53: Krzysik discloses the use of an absorbent article (20) with a topsheet, backsheet and core located there between (See Figure 1). Krzysik discloses the use of a lotioned topsheet to where the lotion composition is melted, applied to the topsheet and then cooled (column 13, line 64 to column 14, line 3). Krzysik disclose the composition comprising 5-95% emollient (see abstract), 0.1-25% of a viscosity enhancer (see abstract), and 5-95% of a wax, which can be a natural oil such as hydrogenated cottonseed oil (abstract and column 10, line 24).

5. Krzysik, however fails to disclose the composition comprising a sterol and a decoupling agent. Beerse discloses the use of a lotion composition that can be used on diapers (column 9, lines 12-13) is based on an emollient and contains about 0.1-10% of a decoupling polymer such as polysaccharides or polyacrylamides (column 36, line 51 to column 37, line 46), a thickening agent such as a clay (column 11, line 24), and a skin moisturizer such as the sterol cholesterol and is present from 0.1 –20% (column 10, line 43 to column 11, line 16). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the composition of Krzysik to include the decoupling agent, the thickening agent and the skin moisturizing agent of Beerse, in order to thicken the skin care composition to improve the moisturizing effect of the composition (see Beerse, column 10).

6. With respect to Claims 2, 22, 41, and 55: See Krzysik column 12, lines 42-58.
7. With respect to Claims 3, 27 and 45: See Krzysik column 9, lines 45-50.
8. With respect to Claims 4, 28 and 46: See Krzysik column 10, lines 48-67.
9. With respect to Claim 9: See Krzysik column 10, lines 19-33.
10. With respect to Claims 12, 13, 32, 33 and 51: Krzysik discloses the use of a rheology modifier such as silica (column 10, line 60 and column 11, lines 1-5).
11. With respect to Claims 21 and 54: See Krzysik column 12, lines 29-34.
12. With respect to Claims 23 and 56: See Krzysik column 12, line 66 to column 13 line 2.
13. With respect to Claim 24: See Krzysik column 13, lines 42-55.
14. With respect to Claim 43: See Krzysik column 13, line 59.

***Response to Arguments***

15. Applicant's arguments filed 7/15/02 have been fully considered but they are not persuasive.
16. With respect to applicant's arguments that one of ordinary skill in the art would not have been motivated to add the thickening agents and skin moisturizing agents of the Beerse patent in view of the large number of groups of compounds disclosed in the Beerse patent: As pointed out in the rejection above, Beerse gives a reason in column 10 to add the thickening agent and the moisturizing agent to a lotion composition, therefore the motivation to combine the two references is in the Beerse patent. With respect to applicant's argument that no motivation is identified to picking elements from the Beerse patent, as disclosed above, Beerse provides motivation to add a skin moisturizing agent into the composition, the Beerse reference then provides a list of suitable materials that can be used for the skin moisturizing agents, therefore disclosing that a suitable skin moisturizing agent is a sterol, such as cholesterol.
17. With respect to applicant's arguments that it would be highly undesirable to use an antiviral/antibacterial composition to improve the skin health due to the fact that such compositions would kill the natural occurring, beneficial flora that is used to protect the skin: It is well known, and demonstrated, in the art that antibacterial material is used on the topsheet or in contact with user's skin in diapers and other absorbent articles, in fact there is a whole subclass (360) in class 064 that is devoted to it. Roe et al. (6,093,869) discloses a topsheet that is treated with an anti-bacterial agent (Column 7, lines 33-57), Gross (6,031,147) discloses that a deodorizing composition with antibacterial agents is known in the art (column 1, lines 31-36)

and Johnson (H1732) discloses anti-bacterial agents used in the topsheet and in close proximity to the skin (see abstract).

18. With respect to Applicant's arguments that Krysik does not disclose the claimed low or high sheer viscosity ranges: Krysik discloses low and high viscosity ranges which overlap with the claimed ranges of the invention, therefore Krysik discloses values which are in the claimed range, therefore disclosing the claimed invention.

19. With respect to Applicant's arguments that Krysik and Beerse does not disclose a method for protecting the skin barrier: Krysik discloses the lotion being located in the topsheet while the article is being worn, the lotion is transferred to the skin of the wearer, therefore causing a lower of protection. The examiner considers this to be a method of protecting the skin, due to the fact that the lotion is used to protect the skin and the article is being left on the user for a sufficient amount of time to transfer the lotion to the skin of the wearer, therefore the rejections stand as stated above.

### *Conclusion*

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Webb whose telephone number is (703) 308-8579. The examiner can normally be reached on M-F (7:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dennis Ruhl can be reached on (703)308-2262. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

jaw   
September 16, 2002